

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2827 of 1999

with

CRIMINAL MISC.APPLICATION No 4561 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MANHARBHAI MULJIBHAI KAKADIA

Versus

STATE OF GUJARAT  
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Appearance:

Cr.M.A. No : 2827 of 1999

MR AD SHAH AND MR SAURIN A SHAH for Petitioner

MR BY MANKAD for Respondent No : 1

MS PARINDA DAWAWALA for Respondent No. 2

Cr.M.A. No : 4561 of 1999

MR MB AHUJA & MS SM AHUJA for Petitioner

MR BY MANKAD for Respondent No : 1

MS PARINDA DAWAWALA for Respondent No. 2  
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/09/1999

COMMON ORAL JUDGEMENT

#. Heard learned counsels appearing for the petitioners appearing in both the above applications and Mr.B.Y. Mankad, learned APP appearing for respondent State and Ms.Parinda Dawawala for Enforcement Officer, Office of the Enforcement Directorate (FERA) - respondent No.2. The contentions raised by the petitioners in these petitions are similar and both the petitioners are relying on the judgment of this Court delivered in Special Criminal Application No : 831 of 1998 (Coram : H.R.Shelat, J.) dated 24th September, 1998. Considering the nature of the averments made in both these petitions and the prayer, these applications are heard together and decided by this common judgment.

#. The petitioners have prayed that the order of issuing process against the accused for contravention of the provisions of FERA read with Section 120 (b) of the Indian Penal Code requires to be set aside and the proceedings of Criminal Case pending in the Court of the Additional Chief Metropolitan Magistrate at Ahmedabad vide Criminal Case No : 44/95 also should be terminated. If the submissions of learned counsel appearing for the petitioners stated in brief, it can be said that the proceedings should be terminated only on the ground that the finding of the Director in case of Show Cause Notice issued by the Department dated 22nd September and 19th September, 1994. The proceedings are initiated against the accused and one Narottam Patel. It was allegation of the department that 44 flats purchased by the petitioner of Criminal Misc. Application No : 2827/1999 was benami and the flat holders were acting as benami for Mr.N.J.Patel of USA. This allegation was minutely scrutinized by the Enforcement Director. The petitioners of Crim. Misc. Application No : 2827 / 99 has quoted the relevant part of the finding recorded at the end of the departmental proceedings initiated against the petitioners. The Special Director in his finding has recorded that;

"This evidence is however is sufficient to bring home the charge of receipt or payments on behalf of Shri N.J.Patel, the person resident outside India. Similarly, there is no evidence on record to establish that Shri N.J.Patel had remitted or caused to remit this funds unauthorisedly." Thus, the Show Cause Notices issued against all the accused have been dropped by the Special Director.

#. The order of dropping the proceedings initiated against the accused in the departmental inquiry / proceedings goes to the route of the merits. Mr. A.D.Shah, learned advocate appearing for the petitioner has placed reliance on case reported in 1994 CTR SC 103 and 133 ITR 909. He has rightly submitted that the case of the petitioners is covered by the judgment of this High Court in case of CHANDRAKANT DALICHAND SHAH VS. STATE OF GUJARAT in Special Criminal Application No : 831 / 1998 (Supra). Mr.Shah has taken this Court through the above judgment and the relevant paragraphs No.3, 4 & 6. The learned Single Judge has appreciated the case reported in P.S. RAJYA VS. STATE OF BIHAR 1996 Supreme Court Cases (Criminal) 897. The Honourable Apex Court has observed that the standard of proof required to be established the guilt in criminal case is far higher than the standard of proof required to be established in the departmental proceedings. It was argued that when the Enforcement Director himself during the department proceedings has observed that the charge levelled against the present petitioners does not have sufficient proof, then there is no use in keeping the criminal proceedings pending in the court of learned Additional Chief Metropolitan Magistrate at Ahmedabad. The learned Single Judge has rightly observed that the in such cases continuation the criminal proceedings would be nothing but unproductive exercise and such proceedings should be terminated.

#. The learned counsel Ms.Dawawla appearing for the Central Government - respondent No.2 had initially resisted the case of the petitioner but when a pointed query was raised as to whether the decision of the enforcement officer of FERA Directorate is challenged by the department by way of appeal or any other proceedings in the higher forum, in response to this query, Mr.Dawawala has fairly conceded that the finding on which the petitioner are mainly relying, are not challenged by the department. She also concedes that though the appeal is provided, the department has not opted to go for higher forum and hence, the finding recorded by the Enforcement Director (FERA) has become final and as a result, the submission made by the learned counsel appearing for the petitioners and the averments made in the application shall have to be accepted and the proceedings of Criminal Case No : 44/1995 pending in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad shall have to be terminated. This court is satisfied and in full agreement that the ratio laid down by the judgment in P.S. RAJYA VS. STATE OF

BHIHAR (Supra) squarely applies to the facts of this case and the proceedings should be quashed.

#. Therefore, both these applications are allowed accordingly. Proceedings of Criminal Case No : 44 of 1995 pending in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad are hereby quashed and set aside. Rule in both these applications are made absolute accordingly. No costs.

Date : 17-9-1999 [C.K.Buch, J.]

#kailash#